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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,888	03/15/2004	Sergio Cirio	Q79842	8328
23373	7590	07/19/2006	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			TAWFIK, SAMEH	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

C

<b>Office Action Summary</b>	<b>Application No.</b> 10/799,888	<b>Applicant(s)</b> CIRIO, SERGIO	
	<b>Examiner</b> Sameh H. Tawfik	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05/26/2006 & 05/31/2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7 and 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7 and 9-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5, 7, 9, 10, 14, and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the bottle or container" in line 3. There is insufficient antecedent basis for this limitation in the claim;

In claims 9 and 14, line 2; "to provide a seal between the casing and the container." is vague and indefinite as it is not clear how applicant will be able to provide seal between the machine casing and the container?;

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 7, and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vander et al. (U.S. Patent No. 5,419,094) in view of Stahlecker (U.S. Patent No. 6,230,472).

Vander discloses a capping head device for application of caps on bottles or containers comprising a casing having an end mouth designed to fit on "the bottle or container" so as to define a closed chamber (Figs. 1 and 2; via capping machine 10 and casing 28 and 34 defining a

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chamber); a capping head disposed within the chamber (Figs. 1 and 2), the capping head directly contacting the caps so as to apply the caps to the bottles or containers (Figs. 1 and 2); and the casing is mounted on the capping head (Fig. 1; via capping head 54) so as to be movable therewith towards and away from a bottle or container and that the closed chamber is defined by the casing when the casing engages the bottle or container as a result of the lowering movement of the capping head onto the bottle or container, see for example (Figs. 1 and 2).

Vander does not disclose that means for connecting the closed chamber with a source of vacuum. However, Stahlecker discloses a similar capping device with means for connecting a closed chamber with a source of vacuum (via vacuum 28 on closed chamber).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Vander's capping device with the use of vacuum means within the closed chamber, as suggested by Stahlecker, in order to evacuate the closed chamber including the bottle out of any air to keep the chamber sterilized (column 4, lines 5-7).

Regarding claim 2: Vander discloses that wherein the casing (Fig. 2) is mounted on the structure of the capping head (Fig. 1) with interposition of rolling bearings and has its end mouth made in an end wall that is elastically compliant within the casing, see for example (Figs. 1 and 2; note that it is inherent to use bearings in such machines).

Regarding claims 3-5: Vander in view of Stahlecker do not disclose that the connection means for connecting the closed chamber with a source of vacuum comprise valve means set between the structure of the casing and the structure of the capping head; wherein the valve means comprise a valve body rigidly connected to the casing and mounted with the possibility of axial sliding with respect to a valve element and has two opposite operating positions, which it

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connects a chamber communicating with the space inside the casing to an opening for connection with the source of vacuum and in the other of which it connects the chamber to an opening for connection to a discharge.

The examiner takes an official notice that with any vacuum source connected to a device it is a must to have a valve; this is old, well known, and available in the art in order to control the force of the vacuum. About the exact location and connection of the valve in respect to the device and vacuum source, it is a matter of engineering design choice to place the vacuum source and valve in the best way and efficient in respect to the device.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Stahlecker's capping device with valve means connected and installed in the device with respect to the vacuum source as a matter of engineering design choice, in order to control the force of vacuum in respect to the chamber.

Regarding claim 7: Vander discloses one or more capping heads (Fig. 1).

Regarding claims 9 and 14: Vander discloses that a seal ring provided on the end mouth of the casing "to provide a seal between the casing and the container", see for example (Figs. 1 and 2; note that it is inherent such sealing ring should be provided in such machine to seal the cap to the bottle).

Regarding claims 10 and 16: Vander discloses that the capping head includes means for imparting rotation to the caps, see for example (Fig. 1; note that it is inherent that in such machines there are means to rotate caps to be secured to the bottles).

Regarding claims 11 and 17: Vander discloses that the casing is being moveable relative to the container from a first position displaced from the container to a second position at which a

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bottom end portion of the casing contacts the container, see for example (Fig. 1); an exterior of the container below the casing is outside the chamber (Fig. 1; via most portion of the bottles are outside the chamber).

Regarding claim 12: Vander discloses that the capping head is coupled to the casing (Figs. 1 and 2).

Regarding claim 13: Vander discloses that the capping head applies cap to the container when the casing in the second position (Figs. 1 and 2).

Regarding claim 15: Vander discloses that the container is a bottle (Fig. 1; via 14).

### ***Conclusion***

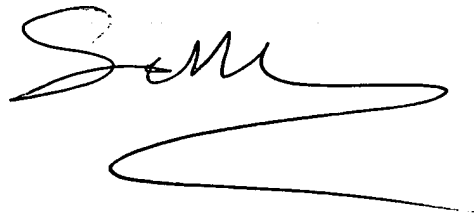
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sameh H. Tawfik whose telephone number is 571-272-4470. The examiner can normally be reached on Tuesday - Friday from 8:00 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Sameh H. Tawfik  
Primary Examiner  
Art Unit 3721

A handwritten signature in black ink, appearing to read 'Sameh', with a long, sweeping horizontal line extending to the right.

ST.